Filed 2/6/03 Ferris v. City of San Jose CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SAM FERRIS,

Plaintiff and Appellant,

v.

CITY OF SAN JOSE,

Defendant and Respondent.

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H023017

(Santa Clara County Superior Court No. CV780401)

Appellant Sam Ferris appeals from the denial of his mandate petition seeking to overturn the decision of the City of San Jose's Appeals Hearing Board finding him in violation of a compliance order and requiring him to pay an administrative penalty of $8500. Ferris contends that the City of San Jose (the City) may not prohibit him from renting out individual rooms in an eight-bedroom single-family home that he owns, but does not live in, even though the zoning district in which his property is located prohibits such a use. We affirm the judgment denying Ferris's petition.

I. Background

Ferris owns property in an "R-1 B-6" residential zoning district in the City of San Jose. The house on Ferris's property has been altered so that it has eight bedrooms, including three in a converted garage, and no common areas except for a single bathroom and a kitchen.

The San Jose Municipal Code (SJMC) permits a property in an "R-1 B-6" zoning district to be used as a single-family residence. The SJMC prohibits the use of such a property as a "Guesthouse." Property is used as a "Guesthouse" when individual rooms are rented to persons for sleeping purposes. A property is not being used as a "Guesthouse" if a "family" rents "rooms to up to three guests, if such use is clearly incidental to the occupancy of the dwelling unit by the family as its own residence . . . and there are no more than six (6) persons living in the dwelling." The SJMC defines a "family" as "one or more persons occupying a premises and living as a single housekeeping unit." A "Single Housekeeping Unit" is defined as "the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling unit, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores and expenses."

After receiving several complaints about Ferris's use of his property as a "rooming or guest house," Bruce Kalin, the City's code enforcement inspector, conducted inspections of Ferris's property on March 31, April 6, July 6 and August 6, 1998.[1] At least five and as many as seven of the bedrooms were rented out when Kalin inspected the property. On one occasion, seven of the eight bedrooms were rented out including one to a family of five, another to a family of

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[1] There were 21 police "service calls" to Ferris's property between April 1, 1998 and December 12, 1998.

three and two others to couples. On another occasion, five of the eight bedrooms were rented out including one to a family of four and another to a family of three or four. Ferris used one of the bedrooms as an office. Each bedroom door bore a separate deadbolt lock, and the refrigerators and kitchen cabinets were padlocked. No personal items were in the bathroom shared by the tenants.

Ferris told Kalin that he did not live on the property. His primary use for the property was the renting of rooms "ranging from $300-$400 per room."[2] Ferris claimed that "all the tenants" were "living together as a single-housekeeping unit" that shared meals and utility costs. However, multiple tenants told Kalin that the tenants did not know each other's names and that there was "no interaction" between the tenants. Kalin concluded from his inspection and his conversations with tenants that the tenants were not functioning as a "single-housekeeping unit."

Kalin issued a compliance order on August 17, 1998 requiring Ferris to stop using the property as a "Guesthouse" no later than September 20, 1998. On September 22, 1998, Kalin reinspected the property. The only significant change was that three of the eight bedrooms were vacant. As before, the rooms were individually rented to individuals. A woman and her two children lived in one bedroom. Three other bedrooms were occupied by single individuals. Ferris told Kalin that the family and a newly arrived single female tenant "are the family" and a longtime tenant was "a guest." Kalin concluded that this claim was not valid.

On September 29, 1998, Kalin again reinspected the property. Ferris told Kalin that six adults were currently residing in the dwelling, and he was using one bedroom as an office. Kalin observed no other changes.

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[2] Ferris apparently did not reside in the dwelling because he was a Penal Code section 290 registrant.

On December 22, 1998, Ferris was notified that the City's Appeals Hearing Board (AHB) would hold a hearing on January 11, 1999 on the issue of whether he had violated the SJMC and failed to comply with the compliance order. The notice informed him that administrative penalties of up to $2500 per day could be imposed. Kalin filed a report recommending that the AHB impose an administrative penalty of $5,650 plus additional penalties if compliance was not achieved by the time of the hearing. Ferris appeared on January 11, 1999 and requested a continuance of the hearing until February 8, 1999. His request was granted.

The sole issue Ferris addressed at the February 8, 1999 AHB hearing was whether he had been in compliance with the SJMC when Kalin reinspected the property on September 22, 1998.[3] Ferris admitted that he "set the rents by room" and individually rented each room. Nevertheless, he asserted that he had not been in violation of the SJMC because his tenants had each signed a "Licensee Family Member Agreement" under which they agreed to a "communal type living arrangement." He maintained that all of his tenants were part of a "single-housekeeping unit" that shared jointly purchased food. Alternatively, he argued that the woman and her two children who were living in one room on September 22 and a single male tenant who was living in another room on September 22 constituted a "single housekeeping unit" that "shared food and were a family" and the other tenants to whom Ferris was renting rooms on September 22 were "guests" of this "family." Ferris insisted that no refrigerators had been locked on September 22. He also contended that he would have "changed the situation on the property" if Kalin had informed him on September 22 that he was not in compliance.

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[3] The AHB did not permit Ferris to "cross-examine" Kalin.

The AHB found that Ferris had failed to comply with the compliance order and instead had continued to use the dwelling as a "Guesthouse" in violation of the SJMC. The AHB ordered Ferris to stop using the property as a "Guesthouse" and to pay administrative costs of $588.95 and an administrative penalty of $8,500. It imposed the $8500 penalty rather than the recommended $5650 penalty because the evidence at the hearing showed that Ferris's use of the property had resulted in many police service calls to the property and a negative impact on the neighborhood while Ferris had realized financial gain from his prohibited use and displayed no remorse.

Ferris filed a petition for a writ of mandate in the superior court asserting that (1) the City denied him procedural due process because it did not inform him that he was not in compliance until more than ninety days after the September 22 inspection, (2) the AHB denied him due process by requiring him to bear the burden of proof and prohibiting him from making legal arguments at the hearing, (3) the AHB's decision deprived him of his property rights, privacy rights, right to equal protection and right to be free of excessive fines, (4) the SJMC provisions that he was found to have violated were invalid because they were facially unconstitutional, unconstitutionally vague and were preempted by state and federal laws and (5) his noncompliance was not unlawful because his use of the property had been "grandfathered in" as a result of his maintaining this use for over a decade.[4] The City opposed Ferris's petition on the grounds that (1) Ferris had not been denied due process or deprived of any of his rights, (2) the City's zoning ordinance was a valid exercise of the City's zoning power and (3) the AHB's

[4] Although Ferris asserted, without elaboration, that he was also entitled to damages, he did not pursue any action other than his writ petition. At the City's request, his writ petition was bifurcated from the remainder of his action.

decision was not an abuse of discretion. The superior court entered a judgment denying Ferris's petition. Ferris filed a timely notice of appeal.

II. Discussion

On appeal, Ferris claims that (a) the SJMC provisions that he was found to have violated were preempted by state law, (b) the SJMC definition of "single housekeeping unit" is unconstitutionally vague, (c) the SJMC provisions deprive him of his right to privacy, (d) the SJMC provisions deprive him of equal protection, (e) the City denied him procedural due process because it did not notify him that he was not in compliance until more than 90 days after the September 22 inspection and (f) the AHB denied him due process by requiring him to bear the burden of proof and prohibiting him from making legal arguments at the hearing.

A. Preemption

Ferris contends that the SJMC provisions prohibiting "Guesthouses" in certain zoning districts and defining a "family" were preempted by "occupancy standards" in the "Uniform Building Code" or the "Uniform Housing Code" and inconsistent with "State Fair Housing Laws" prohibiting landlords from discriminating on the basis of marital or familial status.

"Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747, citations and quotation marks omitted.)

Ferris contends that the SJMC definition of a "family' conflicts with the definitions of family in the Uniform Building Code (UBC) and the Uniform Housing Code (UHC). The definitions that he cites describe a family as a group of people living together in a dwelling unit. Although Health and Safety Code

section 17922 substantially adopts the "building standards" in the UBC and the UHC, it further provides that, "[e]xcept as provided in Section 17959.5, local use zone requirements . . . are hereby specifically and entirely reserved to the local jurisdictions notwithstanding any requirements found or set forth in this part." (Health & Saf. Code, § 17922, subd. (c).) The SJMC provisions at issue here relate solely to "use zone requirements." The City prohibits the use of a property as a "Guesthouse" in an R-1 B-6 zoning district, but it permits such a use in some other zoning districts. And the City's definition of a "family" and of a "single housekeeping unit" are only relevant to this "use zone" restriction. Consequently, neither the UBC nor the UHC preempts the City's "local use zone requirements."

Notwithstanding Ferris's argument to the contrary, the SJMC provisions do not require landlords to discriminate on the basis of marital or familial status. A landlord who rents out a dwelling in an R-1 B-6 zoning district need only ensure that he or she rents the dwelling to a "single housekeeping unit." Such a unit need not be composed of persons who are married or related. Any stable interactive group that functions as a single household may qualify as a single housekeeping unit. A landlord's refusal to rent a single-family dwelling to a transient assemblage of persons who do not interact or function as a single household does not constitute prohibited discrimination.

Ferris also argues that the California Supreme Court's decision in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123 (*Adamson*) precludes the City from enforcing its zoning ordinance. He claims that his situation is "just like" the situation in *Adamson*. Not so.

Adamson owned a ten-bedroom home in a single-family residential district in which *she resided* with eleven other unrelated adults who were indisputably a single housekeeping unit. They shared meals, expenses, chores and vacations, and they were socially, economically and psychologically committed to each other.

(*Adamson* at pp. 127-128.) The City of Santa Barbara's zoning ordinance at that time defined a "family" as a "single housekeeping unit," and it permitted this unit to be composed of either related or unrelated persons. However, this ordinance restricted the size of a "single housekeeping unit" composed of unrelated persons to no more than five while imposing no limit on the size of a "single housekeeping unit" composed of related persons. (*Adamson* at p. 127.)

Adamson claimed that the ordinance was unconstitutional because it violated her and her housemates' constitutional rights to life, liberty, property, happiness and privacy. (*Adamson* at p. 126.) The California Supreme Court held that the ordinance violated their right to privacy. However, the court explicitly distinguished the Santa Barbara zoning ordinance from ordinances that preserved "residential character" by restrictions on "boarding houses." (*Adamson* at p. 133.) And the court noted that a zoning ordinance could validly restrict the use of a single-family dwelling to "a *bona fide* single housekeeping unit." (*Adamson* at p. 134.)

The City of San Jose's zoning ordinance does not restrict the size of a "single housekeeping unit" of related *or unrelated* persons. Hence, it does not suffer from the flaw that invalidated the ordinance in *Adamson*. Instead, the City of San Jose's ordinance preserves residential character by restricting the use of single-family dwellings as "Guesthouses" (i.e., boarding houses) and limiting the use of a single-family dwelling to a *bona fide* single housekeeping unit. Neither of these restrictions is inconsistent with the California Supreme Court's decision in *Adamson*.

B. Vagueness

Ferris claims that the SJMC provision defining a "single housekeeping unit" is unconstitutionally vague because it does not specify precisely the characteristics that would make a group of individuals a single housekeeping unit.

"In fact, a substantial amount of vagueness is permitted in California zoning ordinances: [I]n California, the most general zoning standards are usually deemed sufficient. The standard is sufficient if the administrative body is required to make its decision in accord with the general health, safety, and welfare standard. California courts permit vague standards because they are sensitive to the need of government in large urban areas to delegate broad discretionary power to administrative bodies if the community's zoning business is to be done without paralyzing the legislative process." (*Novi v. City of Pacifica* (1985) 169 Cal.App.3d 678, 682, citations and quotation marks omitted.)

"It is well settled that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. . . . The language used in such legislation must be definite enough to provide a standard of conduct for those whose activities are prescribed as well as a standard by which the agencies called upon to apply it can ascertain compliance therewith. . . . [T]he words used in the statute should be well enough known to enable those persons within its purview to understand and correctly apply them." (*Ross v. City of Rolling Hills Estates* (1987) 192 Cal.App.3d 370, 375, citations and quotation marks omitted.)

The City's definition of a "single housekeeping unit" is actually quite specific and definite. The ordinance defines a "single housekeeping unit" as "the functional equivalent of a traditional family; whose members are a nontransient interactive group of persons jointly occupying a single dwelling unit, including the

joint use of common areas and sharing household activities and responsibilities such as meals, chores and expenses." None of the words used in this definition are obscure or indeterminate. Men and women of common intelligence can discern that a single housekeeping unit is composed of a static ("nontransient") group of persons who interact rather than an ever changing array of individuals who do not even know each other's names. Similarly, the definition's references to the joint use of common areas, the sharing of meals, chores, expenses and other household activities and responsibilities are both specific and readily understood. The SJMC's definition of a "single housekeeping unit" is not unduly vague because it is more than adequate to permit persons of common intelligence to discern its meaning and an administrative body to enforce it.

C. Privacy

Ferris claims that the SJMC provisions at issue violated his right to privacy. This contention is facially invalid. Ferris did not even live in the house. Even if his tenants had a privacy right to the details of their living arrangements, Ferris had no personal privacy right as to those details and therefore lacks standing to raise this issue.

D. Equal Protection

Ferris's equal protection claim appears to be that the City lacks any justification for permitting a single-family dwelling in a residential area to be rented to a single housekeeping unit of seven people but prohibiting the individual rental of rooms in such a house to seven individual tenants. Although he seems to assert that a heightened standard of review applies, he does not identify any fundamental right at issue here. Ferris's economic rights as a landlord are not

fundamental. Thus, rational basis review is the applicable standard. (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 186-187.)

A rational basis for this distinction is apparent. Because a single housekeeping unit functions like a family, the amount of traffic and noise that it produces is likely to be far smaller than that produced by individual tenants who separately shop, cook, entertain friends, do laundry and engage in the myriad of other activities that the maintenance of an individual household entails. His equal protection challenge fails.

E. Notice

Ferris asserts that the City violated his right to procedural due process by failing to promptly inform him of his noncompliance. He claims he was prejudiced by this delay because (1) prompt notification would have resulted in compliance "in a few days" thereby limiting the penalty and (2) the delay interfered with his ability to gather evidence that he was actually in compliance on September 22.

Administrative delay may merit dismissal of the proceeding if the delay is unreasonable and results in prejudice. (*Gates v. Department of Motor Vehicles* (1979) 94 Cal.App.3d 921, 925; *Medical Bd. of California v. Superior Court* (1991) 227 Cal.App.3d 1458, 1462.) The reasonableness of the delay and the question of whether the delay was prejudicial are questions of fact for the administrative body or the superior court. (*Medical Bd. of California v. Superior Court, supra,* at p. 1462.) Both the AHB and the superior court rejected Ferris's contention, so the only issue before us is whether substantial evidence supports their implicit conclusions that the delay was reasonable or did not prejudice him.

The City investigated for more than four months before issuing a compliance order requiring Ferris to remedy his violation. After affording Ferris

more than a month to correct the problem, the City made two inspections, a week apart, that confirmed that he had not corrected the problem. Three months later, the City notified Ferris of the AHB hearing. Ferris then sought and obtained a month-long continuance of that hearing. Since, by the time of the September 1998 inspections, Ferris had been aware of the problem for nearly six months and had continued to violate the City's zoning ordinance even after the issuance of a compliance order, the City's additional delay of three months was not unreasonable.

In addition, the record suggests that Ferris still had not corrected the problem at the time of the February 1999 AHB hearing, nearly two months after the initiation of the administrative proceedings. This rebuts Ferris's claim that prompt notification in September 1998 would have resulted in the correction of the problem "in a few days." It does not appear that the delay in notification substantially interfered with Ferris's ability to gather evidence to support his claim of compliance. Kalin had photographs to support his report, and there was no dispute about the number or identity of the tenants who were living on Ferris's property in September 1998.

Substantial evidence supports the implied findings that the delay was reasonable and that Ferris was not prejudiced by the delay.

F. Due Process at AHB Hearing

Ferris contends that the AHB deprived him of due process by refusing to allow him to make legal arguments and by placing the burden of proof on him at the hearing. We have reviewed the transcript of the administrative hearing, and it does not reflect that the AHB refused to allow Ferris to argue the legitimate issues before it or that it placed the burden of proof on him. Instead, the AHB simply addressed the sole issue that Ferris raised at the hearing: whether he had been in

compliance in September 1998. After receiving Kalin's evidence of Ferris's noncompliance, the AHB merely sought from Ferris any evidence to rebut Kalin's showing. This did not amount to a shifting of the burden of proof. Ferris was not denied due process at the AHB hearing.

III. Disposition

The judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P.J.

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Bamattre-Manoukian, J.